

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOREST LABORATORIES, INC.,

Plaintiff,

Index No. 07 CV 7399

- against -

LEIF NISSEN.

Defendant.

**SECOND DECLARATION OF CHRISTOPHER SERBAGI IN SUPPORT OF
PLAINTIFF’S REQUEST FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

[illegible]

I CHRISTOPHER SERBAGI, an attorney duly licensed to practice law before
this Court, declares the following facts under penalty of perjury:

1. I represent the Plaintiff Forest Laboratories, Inc. ("Forest") in the above-captioned matter and am fully familiar with the facts set forth herein. I submit this Declaration in support of Plaintiff's application for a temporary restraining order and preliminary injunction. In particular, I provide herein additional evidence of the Defendant's bad faith efforts to improperly profit from the good will associated with Forest's famous LEXAPRO trademark.

2. Strong evidence of the Defendant's bad faith is set forth in the Declaration of Eric A. Agovino dated August 17, 2007 and the Declaration of Christopher Serbagi, dated August 20, 2007.

3. My additional investigation indicates that the Defendant has never used the domain name "lexipro.com" in connection with a legitimate business but has always sought only to unlawfully profit from the good will associated with Forest's famous LEXAPRO trademark.

4. A company called the Internet Archive owns a service called the "Way-Back Machine," located at www.waybackmachine.org. The Way Back Machine is a well known and reliable service that provides snap shots of web pages that have appeared on the Internet in the past. The Defendant has owned the domain name "lexipro.com" since January 2002. The only web page that appeared on the Way Back Machine in connection with the domain name "lexipro.com" is attached hereto as Exhibit A. The "lexipro.com" web page has been run by a company called "Information.Com," which provides links to dozens of different advertisers who offer services from on-line gambling, finance, dating, real estate services, and travel. The web page for the Company "Information.Com" indicates that it pays holders of domain names when users click on links provided by advertisers. On information and belief, Defendant has obtained revenues for years based on users who have been improperly directed from a site they thought was connected with the Forest product LEXAPRO to the sites sponsored by Defendant and "Information.Com."

5. Defendant registered the domain name after LEXAPRO was already heavily touted in the press, after Forest filed its intent-to use application for LEXAPRO, and after Forest registered the domain name "lexapro.com." Defendant's sole use of the "lexipro.com" domain name has been in connection with pay-per-click sites, which is further evidence that the Defendant registered and employed the domain name

“lexipro.com,” not as part of a legitimate business concern, but as part of an effort to profit from Forest’s famous LEXAPRO mark. Defendant’s ongoing efforts to link “lexipro.com” to on-line pharmacies, on-line gambling sites, and other sites not sponsored by Forest is causing irreparable damage to Forest and to Forest’s LEXAPRO mark.

Dated: August 21, 2007
New York, New York


CHRISTOPHER SERBAGI

EX. A

Information.com

January 9, 2007

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